

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA 05-1215

April 19, 2006

MICHAEL FINNEY

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F402281]

V.

NEWS-TIMES PUBLISHING COMPANY
AND AMERICAN CASUALTY
COMPANY OF READING, PA.

AFFIRMED

APPELLEES

Appellant, Michael Finney, appeals the Workers' Compensation Commission's adoption of the administrative law judge's decision finding that he failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, and that he therefore failed to prove that he sustained a compensable injury. Appellant asserts that the Commission's decision to deny benefits is not supported by substantial evidence. He argues that, at the very least, the evidence supports a finding that he suffered an aggravation of a pre-existing condition. We disagree and affirm.

Appellant worked for appellee News-Times Publishing Company as a mail clerk. Although appellant suffered back strains in May and December 2002, each time he recovered and returned to work. During the hearing of this matter appellant testified that on January 26, 2004, he injured his back as he was pulling a pallet jack into a storeroom. He testified that, as he was pulling the pallet jack, the jack's wheel hit an indentation in the floor causing the jack to make a sudden stop. The stop caused appellant to release the jack, and it was then that he felt a sharp pain in his lower back. Because he did not believe he was seriously injured, appellant continued working until the end of his shift. Appellant testified that he mentioned the incident to his supervisor, Larry McDaniel, on the afternoon it happened.

According to appellant's account of the events, when he awoke the next morning he was

immobilized due to stiffness and pain. After he called Larry McDaniel to report his injury, Mr. McDaniel sent an employee to appellant's home to complete the workers' compensation paperwork. When appellant filled out the Form N, he did not include a description of the hole in the floor he later contended caused the pallet to make a sudden stop. When questioned about this omission during the hearing, appellant testified that he did not want to open a "barrel of monkeys for that" because he did not think his injury was serious.

Appellant was seen by Dr. Greg Smart the next day, January 28, 2004. Dr. Smart diagnosed appellant with a probable lumbar strain, and he noted that appellant told him his back had already been hurting. Appellant was seen again by Dr. Smart on February 2, February 12, and February 19. Dr. Smart recommended physical therapy, but that recommendation was denied by appellees. Appellees also denied further diagnostic studies including an MRI. Because further treatment was denied, appellant returned to his personal physician at Interfaith Clinic.

Appellant had an MRI on May 13, 2004, and the exam revealed degenerative disc disease with mild posterior bulging at L4-5, and degenerative disc disease with a small to moderate herniation at L5-S1. Appellant was referred for a neurosurgical consultation, but because the report was not provided by appellant to appellee at least seven days before the hearing, it was excluded from evidence.

At the hearing, appellant denied telling Dr. Smart that his back hurt prior to the work incident on January 26. However, the medical records reflect that, just one month prior to appellant's work incident, he was diagnosed by his personal physician at the Interfaith Clinic as having "chronic low back pain." Appellant also gave inconsistent information to a claims adjuster who called him to discuss his accident. When asked whether he had complained to anyone about his back pain prior to his accident, appellant said that he had not. Later, appellant prepared a letter supplementing his telephone conversation indicating that he may have complained to someone about back pain "thinking it had something to do with my kidneys." The medical records do not reflect any diagnosis for a kidney problem that may have caused back pain.

Prior to the hearing, appellees failed to comply with the Commission's prehearing procedure. Due to this failure, a prehearing order was entered precluding appellees from asserting any defense

against appellant's claim or offering any evidence at the full hearing. Appellees filed a motion requesting that the bar against introducing evidence be lifted, and the motion was granted in part and denied in part. Appellees were allowed to introduce medical records and other documents into evidence on the grounds that appellant would not be prejudiced, but the bar against calling witnesses remained.

After hearing testimony and reviewing the record, the ALJ issued an order finding that appellant failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. Further, the ALJ found that appellant failed to prove by a preponderance of the evidence that he sustained a compensable injury. After reciting the standard of proof necessary to prove a compensable injury, the order specifically states that appellant was not a credible witness. The ALJ opined that appellant's testimony was both "internally inconsistent and inconsistent with the documentary evidence." Weight was given to the fact that during the hearing appellant "categorically denied complaining of back pain to his doctors in the days and months before his injury." This testimony was in direct contradiction to the medical evidence. One month prior to appellant's incident at work, he was diagnosed with "chronic low back pain." Three months prior, in October 2003, appellant sought treatment for "LS pain." Finally, Dr. Smart's handwritten notes reflect that appellant reported that his back was already hurting at the time of the incident. Due to the inconsistencies in appellant's testimony, the ALJ was unconvinced that the January 26, 2004, incident was the cause of appellant's back injury. The Workers' Compensation Commission agreed and affirmed and adopted the decision of the ALJ, including all findings and conclusions therein.

On review, we will affirm if the Commission's decision is supported by substantial evidence. *Spencer v. Stone Container Corp.*, 72 Ark. App. 450, 38 S.W.3d 909 (2001). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mays v. Alumnitec, Inc.*, 76 Ark. App. 274, 64 S.W.3d 772 (2001). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Searcy Indus. Laundry v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Where a claim is denied because the claimant has failed to show

an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires the reviewing court to affirm the Commission if its opinion displays a substantial basis for the denial of relief. *Clardy v. Medi-Homes LTC Services LLC*, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In making our review, we recognize that it is the function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Searcy Indus. Laundry, supra*.

Based on the credibility determination concerning appellant's testimony and on the medical evidence, the Commission found that appellant had not met his burden of proving by a preponderance of the evidence that he sustained a compensable injury. Because the Commission's decision displays a substantial basis for the denial of relief, we affirm.

Affirmed.

GLADWIN and VAUGHT, JJ. agree.